IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 872 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

STATE OF GUJARAT
Versus
ATULGAR HIRAGAR GOSAI

==========

Appearance :
MR KC SHAH APP for Appellant
MR VH KANARA for Respondent
MR MADHUSUDAN RATHOD for Respondent

==========

CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 05/07/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.R.VORA)

[1] This appeal is preferred by the State under Section 378 of the Code of Criminal Procedure against the judgment and order delivered by learned Additional Sessions Judge and Fast Track Judge, Court No.3, District: Jamnagar on 14th December, 2004 in Sessions Case No.102/2002 whereby the present respondent being accused came to be acquitted by the trial Court for the offences punishable under Sections 376 and 506(2) of the Indian Penal Code.

[2] Heard learned APP Mr.K.C.Shah for the appellant – State and learned advocate Mr.Madhusudan Rathod for the respondent. Leave to appeal is granted. Appeal is admitted. Learned advocate Mr.Madhusudan Rathod

waives service for respondent.

[3] Upon request of learned counsels for the parties, the matter is taken up for final hearing as both the learned counsels have assured this Court to provide copies of necessary papers as well as Record & Proceedings of the trial Court is available with us.

[4] According to the prosecution case, the incident in question occurred on 13th January, 2002 at 2.30 p.m. at Village : Madhapar (Sampar), a complaint of which was given by victim herself before Jodia Taluka Police Station, District: Jamnagar. Accordingly, victim at .230 p.m. had been to western side of the village for natural call and after that while she was returning, accused – present respondent came there and caught hold of her and dragged her to one place bounded with concrete and committed rape against her wish and will. The relatives of the victim scolded the present respondent, but the relatives of the respondent abused victim and her family members. Therefore, the complaint came to be registered as offered by the victim herself vide C.R.No.3/2002 for the

above said offences. The investigation was entrusted to PSI Shri Patel.

[5] The charge-sheet of the above said crime was submitted by PSI Shri Patel in the Court of Judicial Magistrate, First Class, Jodia and, thereafter, the case was committed to the Court of Sessions. The learned Additional Sessions Judge and Fast Track Judge, Court No.3, Jamnagar framed charges against the respondent – accused vide Ex.4 on 1st October, 2004 and vide Ex.5, the accused pleaded not guilty and hence, the prosecution examined eight witnesses to prove its case. P.W.1 - Dr.Neetaben Dhwarkadas is examined at Ex.9 and P.W.2 – Dr. Gulabbhai Jethabhai Solanki is examined at Ex.12. Victim is examined as P.W.3 at Ex.17, Meenaben Jentibhai, mother of the victim is examined as P.W.4 at Ex.18, Ranchhodbhai Rasubhai, uncle of the victim is examined as P.W.5 at Ex.19, Jentibhai Bachubhai, father of the victim is examined as P.W.6 at Ex.20, the then PSO of Jodia Police Station, who recorded the complaint, is examined as P.W.7 – Martaji Saloji, at Ex.28, while Investigating Officer Shankarbhai Pitambarbhai Patel is examined as P.W.8, at

Ex.31. In addition to the oral evidence, the prosecution has produced documentary evidence as well. After evidence of the prosecution was over, a statement of the accused was recorded by the trial Court on 4th December, 2004 under Section 313 of the Code of Criminal Procedure, wherein denying the evidence of the prosecution, the accused stated that he was innocent and he had enmity by the uncle of the victim and, therefore, he was involved in above said case.

[6] After hearing of both the sides, the learned trial Judge came to the above conclusion vide para-18 with reasons, acquitted the accused. The learned trial Judge recorded that all the witnesses, except police witnesses including the victim herself, did not support the prosecution case and even witness - Ranchhodbhai Rasubhai, uncle of the victim, who was to some extent an eye witness, did not support the version of the prosecution. The learned trial Judge observed that no concluding evidence can be produced by the prosecution as to ascertain the age of the victim, but as per the certificate at Ex.16 issued by Radiologist at the time of the

incident, the age of victim could be from 15 to 17 years and for the above reasons, the learned trial Judge acquitted the accused.

[7] We have scrutinized the evidence carefully and independently, we have also gone through the record of the case and learned counsels for the parties have assisted us by providing extra copies of each document and copies of the oral evidence. We have gone threadbare appreciation of the evidence and have taken into consideration broad and reasonable probabilities arising out of the circumstances of the case.

[8] We have noticed that main witnesses; P.W.3 – victim, P.W.4 - Meenaben Jentibhai, mother of victim, P.W.5 – Ranchhodbhai Rasubhai, uncle of victim and it is alleged that to some extent, he was an eye witness to the incident and P.W.6 – Jentibhai Bachubhai have not supported the prosecution case in any respect. From the cross-examination by learned APP of the above witnesses who have turned hostile, nothing is coming out to support the prosecution. P.W.3 – victim totally denies the incident

for which she had given complaint.

[9] **P.W.1** – Dr.Neetaben Dhwarkadas is examined at Ex.9, was Doctor Incharge on emergency duty at G.G. Hospital, Jamnagar, victim was brought before her with police yadi. There also victim gave her history of rape having been committed against her wish and will and on examination, it was opined by this witness that intercourse might have occurred and possibility of rape could not be ruled out. Though this witness could not find any injury marks on the body of the victim. The victim was examined by this witness on 16th January, 2002. The certificate issued by her is placed at Ex.10. The case papers are produced at Ex.11 in respect of the victim.

[10] **P.W.2** – Dr. Gulabbhai Jethabhai Solanki is examined at Ex.12 and he stated that on 14th January, 2002, he was serving as Medical Officer, G. G. Hospital, Jamnagar where the victim was brought to him with police yadi with history of rape. She was examined by him and at Ex.13 he also produced the case papers though the victim gave the same history before this Doctor as first point in

time, the victim was examined by this witness. She was referred to the Radiologist. This witness also produced on record a certificate issued by Radiologist at Ex.16 and accordingly, the age of the victim appeared to be approximately between 15 to 17 years to the Radiologist.

[11] Thereafter, witnesses No.7 and 8 are police witnesses, out of them witness No.7 being PSO recorded the complaint and witness No.8 investigated the offence.

[12] From the above, it becomes clear that even though through medical evidence, it appears that physical intercourse might have been committed with the victim and she was examined by Medical experts, but taking into consideration the medical evidence only, the accused could not be connected with the crime. When the rest of the evidence is appreciated, it is found that none of the witnesses including the victim, supported the incident of rape for which she had filed First Information Report. In these circumstances, it could be said that there is no iota of evidence to saddle the accused with the liability of crime and that the prosecution could not prove the case

against the accused beyond reasonable doubt. We do not find the judgment and order impugned exceptionable, more so when the impugned judgment and order is required to be examined in an appeal against acquittal. It is an establish law that unless the reasoning given by the trial Court for acquittal are perverse, against the weightage of the evidence and demonstrably unsustainable, no interference is called for in the order of the acquittal passed by the trial Court. On account of the assessment of evidence that we have made independently, as discussed above, there is no reason to interfere in the judgment and order impugned in this appeal and hence, the following order.

Appeal stands dismissed.

[J. R. VORA,J.]

[BANKIM.N.MEHTA,J.]

(vijay)